

REMARKS

The Office Action of June 9, 2005 has been received and its contents carefully considered.

The present Amendment revises independent claim 1 by deleting what now appears to be an unnecessary limitation and by adding subject matter extracted from claims 2 and 3, which are being canceled. The present Amendment also revises independent claims 14 and 21 by specifying generally that the specimen comprises codes that identify notes. This is supported by the passage at page 24 of the present application, lines 20-22. In addition, the present Amendment cancels dependent claims that are inconsistent with the new formulation of their independent claims, and also cancels several other dependent claims (claims 8-12) to reduce the additional-claim fee that is needed with the present Amendment. The present Amendment also adds new claims 27-37 to further protect the invention. Of these new claims, claim 34 is independent and the rest are dependent. It is noted that claim 34 is supported by the passage at page 25 of the application, lines 9-13. It is also noted that new dependent claims 29 and 30 (and other new dependent claims that are similar to them) are supported by the paragraph bridging pages 13 and 14.

The present Amendment also revises claims 1 and 14 to cure the informalities that are noted in section 2 of the Office Action. With regard to claims 21 and 23, however, it is respectfully submitted that the recitation of "a musical composition desired by a person..." in the preamble of claim 21 provides adequate antecedent basis.

For the reasons discussed below, it is respectfully submitted that the independent claims now pending in this application are patentable over the Wiser and McNab references.

Claim 1 now provides that "the person is provided with a set of keys to ... choose from ...". Section 7 of the Office Action comments that "tuning with selected tempos and keys before vocalizing is well known in the art." The problem with this comment is the meaning of "the art." It is acknowledged that the director of a choir typically provides a note so that the singers can set their pitch, and also provides a tempo for the music. However, a musical performance is not "the art" of the present application, or either of the cited references. Moreover, the director of a choir does not provide "a set of notes" as recited in claim 1 in order to permit the singers to "choose." Accordingly, it is respectfully submitted that the Wiser and McNab references would not have provided an incentive, for an ordinarily skilled person, to produce the method that is recited in claim 1.

Independent claim 14 now recites that the specimen comprises "codes to identify the notes picked out rather than sounds picked up by a microphone...". Similarly, independent claim 21 now recites "sending codes that identify notes in the specimen...". It is respectfully submitted that an ordinarily skilled person who was guided by the McNab reference would use audio signals for the specimen, and not codes instead of audio signals. Accordingly, it is respectfully submitted that claims 14 to 21 are patentable over the references.

Turning now to new independent claim 34, step (a) provides that a specimen is generated by a person "using an apparatus configured for sending and receiving information via a network," with this apparatus including keys that are assigned notes of a musical scale and a transducer that sounds the notes when the keys are actuated. Claim 34 concludes with a "wherein" clause which provides that a person "generates the specimen by actuating a sequence of keys while listening to the notes sounded by the transducer."

It is respectfully submitted that the cited references would not have led an ordinarily skilled person to generate a specimen using the keyboard of an apparatus that is configured to send and receive information. The second paragraph on page 2 of the McNab reference states that McNab's "system retrieves music on the basis of a few notes that are sung, hummed, or otherwise entered." The next paragraph advises that McNab's system "transcribes melodies automatically from microphone input." This suggests that McNab's reference to notes that are "otherwise entered" means entered by way of a microphone. McNab's abstract states, " You can sing (or hum, or play) a few notes...", and playing a musical instrument before a microphone is indeed quite common. Accordingly, it is respectfully submitted that ordinarily skilled person would interpret McNab's comment about "a few notes that are sung, hummed, or otherwise entered" to mean sung, hummed, played, whistled, or otherwise audibly captured by a microphone.

Nothing in McNab would have led an ordinarily skilled person, who wanted to improve Wiser's system in some way, to generate a specimen using a keyboard that is already present in an apparatus that is configured for sending and receiving information via a communication network. Accordingly, it is respectfully submitted that the invention defined by claim 34 would not have been obvious from the cited references.

Since the remaining claims depend from the independent claims discussed above and recite additional limitations to further define the invention, they are patentable along with their independent claims. Nevertheless, new depend a claims 30-32 and 37 will now be briefly mentioned. Claim 30 (for example) recites, "wherein deriving the pattern comprises generating information identifying a sequence of notes in the specimen without rests between the notes, and information about the time interval between the beginning of one note in the sequence and the beginning of the next note." The McNab reference, in

contrast, is concerned with transcribing a specimen into "ordinary musical notation" (see McNab's abstract), and ordinary musical notation includes rests. The reference mentions other possibilities, such as a sequence of up and down intervals and repetitions (see the first full paragraph on page 5 of the reference), but even though such a sequence probably omits rests there would be nothing to suggest adding information about the time interval from the beginning of one note to the beginning of the next note.

New dependent claim 35 also deserves special mention. It provides that the apparatus of claim 34 includes a screen, and that "a mapping that associates notes of the scale with keys of the keyboard" is displayed on the screen. Neither reference suggests this.

It is noted that the present amendment adds 10 claims to the application, but cancels 12. However, one of the new claims is independent. Accordingly, an additional claims fee of \$100 (for a small entity) is being submitted concurrently.

For the foregoing reasons, it is respectfully submitted that this application is no condition for allowance. Reconsideration of the application is therefore respectfully requested.

Respectfully submitted,



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